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2 **UNITED STATES DISTRICT COURT**

3 **DISTRICT OF NEVADA**

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5 PIANGE JACKSON, an Individual,

6 Plaintiffs,

7 v.

8 ARGOSY UNIVERSITY, ON-LINE
9 DIVISION a Arizona Corporation; ARGOSY
10 UNIVERSITY (ORANGE COUNTY AND
11 SANTA MONICA, CA), a California
12 Corporation; ARGOSY UNIVERSITY
13 EDUCATION MANAGEMENT, LLC, a
14 Delaware Corporation; A wholly-owned
15 subsidiary of EDUCATIONMANAGEMENT
16 HOLDINGS, LLC, a Delaware Corporation;
17 wholly-Owned by EDUCATION
18 MANAGEMENT CORPORATION, a
19 Pennsylvania Corporation; ARGOSY
20 UNIVERSITY of ARGOSY EDUCATION
21 GROUP, INC., a Illinois Corporation; and
22 DOES 1 through 10 and ROES 1through 10
23 INCLUSIVE,

24 Defendants.

Case No. 2:14-cv-00166-APG-VCF

**ORDER GRANTING MOTION TO
DISMISS**

(Dkt. No. 5)

25 Defendants Argosy University Education Management, LLC, Education Management
26 Holdings LLC, Education Management Corporation, Argosy Education Group, Inc., incorrectly
27 named as “Argosy University of Argosy Education Group, Inc.,” and its affiliates and divisions
28 including properties located in Orange County and Santa Monica (collectively, “Defendants”) filed a motion to dismiss. (Dkt. #5.) For the reasons discussed below, the motion is granted.

Plaintiff Piange Jackson alleges that Defendants discriminated against her by assigning her two failing grades in an advanced writing class because of her race. Her claims are based on two alleged statements of the instructors who assigned her failing grades, in which the instructors expressed that Plaintiff’s poor writing skills are a result of her race. Plaintiff’s complaint asserts

1 discrimination under 42 U.S.C. § 1981 and Title VI of the Civil Rights Act of 1964 and includes
2 various state law claims. (Dkt. # 1.)

3 However, over a year earlier, Plaintiff filed an action against Defendants based on
4 identical factual allegations (“First Action”). *See* Compl. at 3–6, *Jackson v. Argosy Univ., On-line*
5 *Division*, No. 2:12-cv-02091-APG-NJK (D. Nev. Dec. 7, 2012), Doc. # 1. In the First Action, I
6 dismissed several defendants without prejudice due to Plaintiff’s failure to effectuate service. *See*
7 Order of Dismissal, *id.* (Dec. 11, 2013), Doc. # 16. I then granted Defendant’s motion to dismiss
8 for failure to state a claim and dismissed Plaintiff’s complaint without prejudice. *See* Order, *id.*
9 (Jan. 27, 2014), Doc. # 17. Finally, when Plaintiff failed to file an amendment within the time
10 allotted, I dismissed the case with prejudice. *See* Order, *id.* (Mar. 11, 2014), Doc. # 18. However,
11 on January 29, 2014, while the First Lawsuit was still pending, Plaintiff filed this separate action.

12 As the First Action has now been determined, the present action is barred by the doctrine
13 of res judicata. The doctrine of res judicata applies whenever there is “(1) an identity of claims,
14 (2) a final judgment on the merits, and (3) identity or privity between parties.” *W. Radio Servs.*
15 *Co. v. Glickman*, 123 F.3d 1189, 1192 (9th Cir. 1997). “The central criterion in determining
16 whether there is an identity of claims between the first and second adjudications is ‘whether the
17 two suits arise out of the same transactional nucleus of facts.’” *Frank v. United Airlines, Inc.*, 216
18 F.3d 845, 851 (9th Cir. 2000). Thus, an identity of claims encompasses “all grounds for recovery
19 which could have been asserted, whether they were or not, in a prior suit between the same
20 parties.” *Owens v. Kaiser Foundation Health Plan, Inc.*, 244 F.3d 708, 714 (9th Cir. 2001)
21 (quoting *Gregory v. Widnall*, 153 F.3d 1071, 1074 (9th Cir. 1998)). Additionally, unless
22 specified otherwise, the dismissal of claims for the failure of a party to comply with a court order
23 “operates as an adjudication on the merits.” Fed. R. Civ. P. 41(b). Thus, involuntary dismissal of
24 a party’s claims generally constitutes a final judgment on the merits for purposes of res judicata.
25 *Owens*, 244 F.3d at 714.

26 Despite Plaintiff’s contentions to the contrary, all three elements of res judicata are
27 evident in Plaintiff’s two actions. First, both actions are based on Plaintiff’s receipt of failing
28 grades and her allegations that the instructors assigned her failing grades because of her race.

1 Although the instant complaint includes some supplemental information and the listed causes of
2 action are technically different, the main allegations—including the statements made by the
3 instructors to Plaintiff—are identical, and any of the later complaint’s causes of action could have
4 been made in the first complaint. Second, because I dismissed with prejudice Plaintiff’s First
5 Action for failure to file an amended complaint by the stated deadline, the dismissal operates as
6 an adjudication on the merits for res judicata purposes. Finally, there is no dispute that the
7 actions involve identical parties. Thus, res judicata is applicable and Plaintiff’s action is barred.

8 I am not persuaded by Plaintiff’s arguments that I should ignore the doctrine of res
9 judicata because Plaintiff was unrepresented in the First Action. Although Plaintiff may have
10 filed the action pro se, it is apparent from Plaintiff’s Supplement to her Opposition (Dkt. # 8) that
11 Plaintiff retained counsel after I had dismissed certain parties without prejudice for failure to
12 serve. It is also apparent that Plaintiff and her counsel were aware of the dismissal of the first
13 complaint and the corresponding deadline for filing an amended complaint. Thus, I can only
14 conclude that Plaintiff chose to file a separate, redundant action while represented. Plaintiff may
15 not escape the consequences of that act simply because the first complaint was filed pro se.

16 Further, Defendants’ failure to move to consolidate the actions does not constitute a
17 waiver of their right to assert res judicata. Plaintiff’s attempt to abandon the prosecution of one
18 action and simply “start over” by filing another is not an acceptable means of litigation. Although
19 Defendants were obligated to inform me of the related action under Local Rule 7-2.1, that
20 obligation is equally applicable to Plaintiff. Defendants’ failure to comply with its obligation
21 does not excuse Plaintiff’s own neglect. Defendants properly asserted the res judicata defense
22 once the dismissal of the First Action had become final.

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1 IT IS THEREFORE ORDERED that Defendants' Motion to Dismiss is GRANTED.
2 Plaintiff's complaint is dismissed with prejudice and the Clerk of the Court is instructed to close
3 this case.

4 DATED THIS 14th day of July 2014.

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8 ANDREW P. GORDON
9 UNITED STATES DISTRICT JUDGE
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